No. 80-911

In the Supreme Court of the United States

OCTOBER TERM, 1980

GLENN JONES AND WILLIE WATSON, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioners contend that the boarding and search of their vessel by the Coast Guard violated the Fourth Amendment.

1. Following a non-jury trial on stipulated facts in the United States District Court for the Southern District of Florida, petitioners were convicted of possessing marijuana with intent to distribute it, in violation of 21 U.S.C. 841(a)(1), and conspiracy to commit that offense, in violation of 21 U.S.C. 846.[1] They were sentenced to concurrent terms of three years' imprisonment on each count, and to concurrent special parole terms of two years. The court of appeals affirmed (Pet. App. 1-3).

Prior to trial, petitioners moved to suppress evidence seized by Coast Guard officers following the boarding of petitioners' vessel off the Florida coast. The district court

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[1]Petitioners were acquitted of attempting to import marijuana (21 U.S.C. 952).

denied the motion. The evidence showed that on July 19, 1978, at approximately 8:00 p.m., Coast Guard officers from the cutter CAPE YORK were preparing to conduct a routine administrative and safety inspection of an American shrimping vessel, the CAPTAIN OTIS II. At about the same time, fellow officers observed two other shrimp trawlers, the MISS ELENA and the GEECHEE BOY II, approximately three miles to the west (H. Tr. 10-11, 31-32.)[2] As soon as the boarding party came on board the CAPTAIN OTIS II the two other trawlers, which had been at anchor and did not have their shrimp nets out, got under way and headed into a nearby shrimp fleet (H. Tr. 12-13). Coast Guardsmen aboard the CAPE YORK radioed this information to Coast Guard headquarters in Key West, Florida, and received instructions to locate the other two shrimp boats (H. Tr. 13-14). Nearly three hours later, the crew of the CAPE YORK located the GEECHEE BOY II within the 12-mile territorial limit, with its shrimp nets in the water; a Coast Guard boarding party was sent to conduct an administrative and safety inspection of the GEECHEE BOY II to insure compliance with federal laws (H. Tr. 16-18, 27). Upon boarding the vessel, which was manned by petitioners, the boarding party detected the odor of marijuana (H. Tr. 37-38, 42, 45-46). A check of the vessel's documentation papers revealed that those papers were not in order (H. Tr. 37-38). Moreover, while checking the safety equipment, two members of the boarding party observed bales of marijuana in the vessel's galley (H. Tr. 46-47). Further inspection revealed bales of marijuana in the hold, the engine room, and the wheelhouse; in all 57,240 pounds of marijuana were seized (H. Tr. 39, 41, 43; Tr. 2).

2. Petitioners contend that the boarding of the GEECHEE BOY II to conduct a documentation and safety

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[2]"H. Tr." refers to the transcript of the suppression hearing. "Tr." refers to the trial transcript.

inspection violated their Fourth Amendment rights because it was unsupported by probable cause or reasonable suspicion that the vessel was being operated in violation of United States laws. They argue that the Coast Guard sought to circumvent the requirements of the Fourth Amendment by using the pretext of a document and safety check to disguise their actual motivation, which allegedly was to uncover evidence of a drug smuggling scheme. The court of appeals properly rejected these contentions.

The evidence showed that the purpose of the Coast Guard patrol was to enforce all United States laws, including safety and documentation requirements, not only those laws relating to drug smuggling. This Court has recently declined, on several occasions, to review similar claims that the Fourth Amendment was violated by warrantless and suspicionless boardings of vessels at sea by Coast Guard officers conducting safety and documentation inspections pursuant to 14 U.S.C. 89(a). See *Erwin* v. *United States*, cert. denied, 444 U.S. 1071 (1980); *Warren* v. *United States*, cert. denied, No. 79-6217 (May 19, 1980); *Harper* v. *United States*, cert. denied, No. 79-1863 (Oct. 6, 1980).

There is even less reason to grant review in the present case. This is not a situation akin to that in *Delaware* v. *Prouse*, 440 U.S. 648 (1979), where police officers made random stops of motor vehicles for license and registration checks. In *Prouse* the Court held that stopping an automobile and detaining the driver for a license and registration check is unreasonable under the Fourth Amendment absent articulable and reasonable suspicion that the motorist is unlicensed, the vehicle is unregistered, or that the vehicle or its driver are otherwise subject to investigation for violation of law. 440 U.S. at 663. Here, the Coast Guard officers boarded the GEECHEE BOY II only after their suspicions were aroused by their observations of petitioners' vessel. The GEECHEE BOY II had been at anchor with its shrimp

nets up prior to the boarding of the CAPTAIN OTIS II, another shrimp trawler that was in the area. As the boarding crew boarded the CAPTAIN OTIS II, petitioners' vessel immediately weighed anchor, lowered its shrimp nets and joined a nearby shrimp fleet. In light of this behavior, it was not unreasonable for the Coast Guard officers to suspect that the persons on board the GEECHEE BOY II were seeking to avoid detection for violation of documentation or other United States laws. See, *e.g.*, *United States* v. *Allen*, No. 79-1059 (9th Cir. Nov. 5, 1980), slip op. 890; *United States* v. *Demanett*, 629 F. 2d 862, 868 (3d Cir. 1980), petition for cert. pending, No. 80-553; *United States* v. *Rubies*, 612 F. 2d 397, 400-401, 403-404 (9th Cir. 1979), cert. denied, No. 79-5954 (May 12, 1980). Thus, assuming arguendo that the standards established in *Prouse* are applicable to Coast Guard boardings of American vessels at sea, they were satisfied here.[3]

In any event, even if the observations of petitioners' vessel did not give rise to reasonable suspicion to justify a stop under *Prouse*, we submit that the holding of *Prouse* should not be applied uncritically to boardings of vessels at sea. In light of the important governmental interests in enforcing the numerous laws applicable to vessels on the high seas (including documentation and licensing requirements, marine safety and navigation laws, and fisheries conservation and management laws), the practical difficulties involved in law

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[3]Because the boarding here was justified by reasonable suspicion, this case does not conflict with *United States* v. *Piner*, 608 F. 2d 358, 361 (9th Cir. 1979), which held that because of the heightened "subjective intrusion," the Fourth Amendment is violated by random boardings after dark. The case is also distinguishable from *Piner* because the stopped vessel here was a shrimp trawler, whereas *Piner* involved the stopping of a pleasure craft. Because of the comprehensive federal regulation of fishing and trading vessels (see *Douglas* v. *Seacoast Products, Inc.*, 431 U.S. 265, 272 (1977)), persons aboard such vessels can have no reasonable expectation of complete freedom from governmental intrusion.

enforcement at sea, and the reduced expectations of privacy of those on board American flag vessels—particularly fishing or trading vessels—because of the pervasive nature and long history of maritime regulation, several courts of appeals have correctly held that the limited intrusion upon legitimate privacy interests occasioned by boardings conducted under the authority of 14 U.S.C. 89(a) is not unreasonable within the meaning of the Fourth Amendment. See *United States* v. *Arra*, 630 F. 2d 836, 840-842 (1st Cir. 1980); *United States* v. *Hilton*, 619 F. 2d 127, 131-133 (1st Cir. 1980), cert. denied, No. 79-1732 (Oct. 6, 1980); *United States* v. *Williams*, 617 F. 2d 1063, 1079-1084 (5th Cir. 1980).

Under Section 89(a), the Coast Guard officers were empowered to board the GEECHEE BOY II for the proper purpose of conducting a documentation and safety inspection. The strong odor of marijuana that the officers detected immediately upon boarding, and the bales of marijuana that came into plain view in the course of the limited safety check, provided probable cause to conduct a thorough, warrantless search of the vessel. See *United States* v. *Alfrey*, 620 F. 2d 551, 555 (5th Cir. 1980), cert. denied, No. 80-5158 (Oct. 20, 1980); *United States* v. *Erwin*, 602 F. 2d 1183, 1184 (5th Cir. 1979), cert. denied, 444 U.S. 1071 (1980); *United States* v. *Whitaker*, 592 F. 2d 826, 829 (5th Cir.), cert. denied, 444 U.S. 950 (1979).

There is no substance to petitioners' claim that the boarding of the GEECHEE BOY II for a documentation and safety check was merely a pretext to search for contraband. First, the court of appeals found (Pet. App. 3) that "the facts argue against the assertion that the Coast Guard's §89(a) inspection was a mere pretext for an opportunity to conduct a full search." See H. Tr. 25-27. But even if one of the officers' purposes in boarding the vessel was to search for contraband, their state of mind would not invalidate an otherwise proper search. See *United States* v. *Arra*,

supra, 630 F. 2d at 845-846; *United States* v. *Demanett*, *supra*, 629 F. 2d at 869. As the Court made clear in *Scott* v. *United States*, 436 U.S. 128, 137 (1978), the existence of an alleged Fourth Amendment violation turns on an objective assessment of the officer's actions in view of all the pertinent circumstances, without regard to his underlying intent or motivation in taking those actions.[4] See also *United States* v. *Robinson*, 414 U.S. 218, 236 (1973); *Terry* v. *Ohio*, 392 U.S. 1, 21-22 (1968). Viewed objectively, the Coast Guard officers properly boarded the vessel to conduct a documentation and safety inspection pursuant to 14 U.S.C. 89(a); the officers' actions once on board the vessel were consistent with that purpose and were reasonable under the Fourth Amendment.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

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[4]Petitioners' argument would lead to the absurd result that officers with reason to suspect criminal activity could not conduct the very same limited inspection that is proper in the absence of any suspicion at all. See *United States* v. *Arra*, *supra*, 630 F. 2d at 846.